IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1871 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ISHABHAI DAWOODBHAI MIYANA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1871 of 2003

MR PS CHAMPANERI for Petitioner No. 1

MS NANDINI JOSHI,AGP for Respondent No. 1-3

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 23/05/2003

ORAL JUDGEMENT

1. The petitioner, in this petition, has challenged the order of detention dated 2.12.2002 passed by the District Magistrate, Surendranagar, the respondent no.2

herein. The petitioner is detained under section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 (in short 'the Act'). In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on two prohibition cases and one case registered for the alleged offences punishable under sections 186, 332, 504, 353, 147, 148, 149 of the IPC and under section 135 of the Bombay Police Act. The last prohibition case as well as case under IPC are registered on the same date i.e. on 30.10.2002. Over and above the aforesaid cases, the detaining authority has placed reliance on the statements of two witnesses whose identity has not been disclosed claiming privilege under section 9(2) of the Act for the incidents having taken place on 30.10.2002 and 4.11.2002. Considering the above material, the detaining authority has recorded a finding that the detenu being a bootlegger within the definition of section 2(b) of the Act, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, the detention of the petitioner is necessary and, therefore, while exercising powers under section 3(2) of the Act, the order of detention has been passed.

2. The learned Counsel for the petitioner has raised many contentions while challenging the order of detention. However, it is not necessary for me to deal with each and every contention in view of the fact that the petition is required to be allowed on the ground of delay in passing the impugned order.

3. As stated above, the petitioner is involved in two prohibition cases and one case under the IPC. The prohibition cases as well as the case under IPC are registered on 30.10.2002 while the impugned order of detention is passed on 2.12.2002. True, the detaining authority has placed reliance on two unregistered cases alleged to have taken place on 30.10.2002 and 4.11.2002. However, those cases have been referred to only with a view to cover up the gap. The detaining authority, in the instant case, has not filed affidavit in reply. Therefore, this unexplained delay makes the ground of detention not proximate, vitiating the order of detention. This Court, in the case of Elesh N.Patel Vs. Commissioner of Police, Ahmedabad City, reported in 1997(1) GLH 381, quashed and set aside the detention order in the identical situation.

4. In the result, the petition is allowed. The impugned order of detention dated 2.12.2002 passed against the detenu is hereby quashed and set aside. The

detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is accordingly made absolute. Direct Service.

(Kshitij R.Vyas,J.)

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